CITY OF RYE

March 14, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington D.C. 20554

RE: FCC Draft Order in the matter of ACCERLATING WIRELESS BROADBAND DEPLOYMENT BY REMOVING BARRIERS TO INFRASTRUCTURE INVESTMENT - **WT DOCKET No. 17-79**

Dear Secretary Dortch,

The City Council of the City of Rye, New York, respectfully submits the following comments in response to the Commission's release of draft text for the Second Report and Order in Wireless Bureau Docket No. 17-79.

First, federal environmental and historical review provisions are important and should not be removed. Second, state authority is simultaneously under attack and the result of erosion of both federal and state regulations will be that private corporations will be left to their own devices. Third, 5G is in its infancy and not ready for mass deployment. Presently there is no demonstrated business case or practical application for 5G that supports the facilitation of its build-out especially at the expense of environmental, historical or municipal considerations. Finally, the premise of the proposed rule is that our major carriers are suffering in the present regulatory environment; however, there are numerous public assertions of these carriers that undercut the thought that they are in need of regulatory relief.

Federal environmental and historical review provisions are the first bulwark against private interests despoiling sites protected in the first instance by Congressional mandate. When public interests are in conflict with private corporations, whose mandate is to create profit and shareholder value, private corporations cannot – should not – be expected to balance and fairly represent those opposing interests. That is the duty of government and its agencies. To remove federal protection of environmentally and historically sensitive sites is to convert value shared by all Americans to value in the pockets of a few corporations.

Removing avenues for historic and environmental review at the federal level creates gaps in protections and a slippery slope for state and municipal regulation, and should be rejected by the FCC. While the telecommunications industry advances the argument that certain federal review procedures are not suited to support advances in wireless technologies such as small cells, the FCC's response in its draft order, to effectively remove avenues for historic and environmental review, sets a dangerous precedent. Removal of NEPA and NHPA review shifts, at the federal level, control and authority over often controversial wireless deployments and governance to industry providers. The industry is already lobbying to eliminate state and local review. As industry would have it, there would be NO review by any governmental authority over small cell siting and installation. That cannot be an acceptable position – either with respect to the particularly sensitive areas protected by NEPA and NHPA or those protected by state and local authority.

Since the creation of the Communications Act of 1934 ("Act") and its subsequent amendments and revisions, Congress has exercised particular care to respect the important roles played by states and local governments in the deployment and governance of communications technologies and services. This shared-jurisdiction framework ensures that an appropriate balance is struck between consistent national policy, respect for our system of laws and the role states play in that system, and the quintessentially local nature of infrastructure deployment and service delivery as it takes place on a community-by-community basis.

While the FCC does not base its actions here on reliance on the presence of state and local review, its analysis is incomplete in that it fails to acknowledge the real gaps in protection that would be created by the adoption of the draft order as written. The draft rules apply a flawed analysis to justify wholesale abandonment of federal and historic protections. The draft rules should be rejected.

Most importantly, the narrative advanced by the industry and underlying the FCC draft order, is false. 5G is a chimera: the technology of 5G is unsettled and under development and technical standards are incomplete. The industry may be arguing that new federal rules or rulemakings are needed to facilitate the rollout of 5G transmission, but this is not true. The industry actually is pressing to bring **4G** small cells to well-to-do and already-served areas in an effort to get a competitive lock on these markets on the cheap. The purpose is to drive out wired providers – be they "cable" or "fiber" based.

Underserved areas of the United States may well be served by other means (e.g., towers in rural areas), or municipalities in underserved areas may be so desperate for service that they will embrace small cell installation without any siting questions. In a sense, the motivation of the industry in removing obstacles to deployment is a real estate play as well as a customer capture play. It is not 5G driven, certainly not immediately so.

5G in its present infancy and the foreseeable future is fragile and limited. Promotional hype surrounding 5G wireless is a marketing push not serving any demonstrated public or market need that cannot be better met by wired infrastructure or still-emerging 4G LTE technology. Further, with the FCC's focus on "winning the global race to 5G", the draft rules narrowly define small cells – taking into account only the antennae – and not associated equipment. To say that the Commission is only talking about three cubic feet of equipment is facially untrue and is a means of opening sites to far more equipment than described in the corrupt definition. Rather than demanding that the industry use

less intrusive technologies now while wireless technology progresses the draft rules require that we accept ugly, large and out of date pole equipment while the industry continues to work out its kinks.

Importantly, there is no evidence that the federal rules or rulemakings must be revised. The record in these dockets reflects an industry response that is brimming with demands for federal action but woefully low on evidence of need or sound legal reasoning. Were the comments of wireless providers in these proceedings to be believed, a vast array of practices implemented by state and local governments are having a crippling impact on the ability of wireless providers to deploy new services to meet consumer demands and compete in the marketplace. The public statements of those same companies, however, suggest otherwise. All four major nationwide carriers are engaged in what they characterize as aggressive deployment of "innovative technologies at a breakneck pace," and they take every opportunity to celebrate their deployment and innovation success. Actual or *de facto* prohibitions – the narrow category of policies the FCC has authority to preempt – would surely prevent providers from achieving the kinds of deployment and investment success they so frequently celebrate – were they real prohibitions at all. The law does not entitle providers to relief from the costs of doing business – only from prohibitions.

In closing, we urge the Commission to reject the FCC draft rules and work with states and municipalities, rather than against them, to ensure that all Americans have access to the best in broadband technology – whether wired or wireless – while preserving control over their own communities through traditional local government deliberations.

Sincerely,
The City Council of the City of Rye, New York

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